IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

Crl.MC.No. 2550 of 2005()

CC.128/2005 of J.F.C.M-6 (SPECIAL COURT FOR TRIAL FOR MARADU CASES), KOZHIKODE

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PETITIONER:

K.M.BASHEER, K.K.HOUSE, THERUVATH,
P.O.THALANGARA, KASARAGOD.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:
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1. KANNUR RAJAN, S/O.THOMAS, EDITOR,
PALCO CRIME, KASABA AMSOM DESOM,
KOZHIKODE.

2. THE STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.R.SUDHISHFOR R1
SMT.M.MANJU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2550 of 2005

Dated this the 8th day of January 2007

O R D E R

The petitioner is the seventh accused in a private complaint filed by the first respondent herein. In the said complaint, the first respondent had raised the allegations against the petitioner and nine others. Accused 1 to 5 are police officials. Accused 6,8,9 and 10 are private persons who allegedly shared the common intention with the petitioner and indulged in the commission of the offence punishable interalia under Sections 120B, 193,352 and 506(ii) read with 34 I.P.C.

2. The crux of the allegation is that the petitioner, who is alleged to be an influential person, in collusion with the police officials had allegedly gone to Kozhikode and had illegally taken the complainant into custody and had abducted him from Kozhikode to Kasaragod. This, it is alleged, was committed by the seventh accused, who is an influential political personage at Kasaragod using his influence with the police. He had earlier flied Annexure A2 complaint before the Circle Inspector of Police, Kasaragod. On the basis of that Annexure A3, an F.I.R was registered. According to the petitioner, he had gone to

Kozhikode and had handed over currency notes to the complainant as indicated by him in Annexure A2 complaint. While the complainant herein alleges that he was physically taken into custody and illegally brought to Kasaragod, the petitioner contends that he had only handed over the currency notes and the complainant had proceeded to Kasaragod on his own. That is the area of difference between the case of the petitioner and the case of the respondent/complainant.

3. The learned Magistrate has taken cognizance. The petitioner has received notice. He has not entered appearance before the learned Magistrate. Instead, he has rushed to this court with this petition under Section 482 Cr.P.C.

4. The respondent/complainant has entered appearance. The learned counsel for the respondent/complainant submits that there is absolutely no merit in the prayer for quashing of the proceedings. The respondent/complainant has not received a full and adequate opportunity to substantiate his contentions. It would be premature to come to any conclusion of facts on the basis of the meager material presently available. The respondent/complainant must be given an opportunity to substantiate his allegations and the petitioner will get an

opportunity to disprove the same. At this moment and with the available inputs, there is absolutely no justification in the prayer for invocation of the jurisdiction under Section 482 Cr.P.C, submits the learned counsel for the respondent/complainant.

5. I have been taken through the averments on the complaint as also in the annexures. I shall carefully avoid any detailed discussions on merits about the acceptability of the allegations and the credibility of the data collected. The learned counsel for the petitioner, in particular, relies on the proposition No.7 in State of Haryana vs. Bhajan Lal [1992 (supp) 1 335]. The learned counsel contends that the allegations are totally false and are invented for the purpose of vexing and harassing the petitioner on account of animosity.

6. Any expression of opinion on merits is likely to adversely affect the interests of the rival contestants. Suffice it to say that, on the materials presently available and considering the broad and inherent probabilities in the case, I am not persuaded to jump to a conclusion at this stage that there are such circumstances as are contemplated in proposition No.7 in State of Haryana vs. Bhajan Lal [1992 (supp) 1 335]. It is impossible to sail to a safe conclusion that the allegations are

false and are raised vexatiously to harass the petitioner herein. This, I am satisfied, is a proper case where the petitioner must appear before the learned Magistrate and claim discharge/acquittal in accordance with law. Both parties must get opportunity to substantiate their respective contentions before the learned Magistrate before any decision having a bearing on the complicity of the petitioner is taken in the matter.

7. This Criminal Miscellaneous Case is in these circumstances dismissed. I do, however, hasten to observe that the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to raise all necessary and appropriate contentions before the learned Magistrate.

8. The learned counsel for the petitioner submits that the petitioner wants to apply for exemption from personal appearance. It is for him to make necessary application before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits and in accordance with law. Every court must do the same.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006